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COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT 42 U.S.C. § 1983

FILED
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RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Name Soltero, Victor D.
(Last) (First) (Initial)

Prisoner Number CDCR K36340Institutional Address HIGH DESERT STATE PRISON DS-210
P.O. Box 3030Susanville, CA 96127UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAVICTOR DANIEL SOLTERO

(Enter the full name of plaintiff in this action.)

VS.

JOE MC GRATH; RODERICK O. HICKMAN;M.S. EVANS; G. PUNDERS; J. CELAYA; M.ATCILEY; J. RUELAS; E. GARCIA; R. SALGADO;G. BEVINS, et al. (See II parties B.)

(Enter the full name of the defendant(s) in this action.)

CASE NO. C07-4256 PJH (PR)
(to be provided by the clerk of court)

COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C. § 1983, AMENDED
COMPLAINT RE: ORDER
DATED MARCH 10, 2008.

[All questions on this complaint form must be answered in order for your action to proceed.]

I. Exhaustion of Administrative Remedies

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement

High Desert State Prison DS-210
P.O. Box 3030
Susanville, CA 96127

B. Is there a grievance procedure in this institution?

YES (X) NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES (X) NO ()

D. If your answer is YES, list the appeal number and the date and result of the appeal at

each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Pursuant to California Code of Regulations (CCR) 3084.5(a)(3) "...informal level shall be waived..."

2. First formal level Pursuant to CCR 3084.5, appeals coordinator bypass

3. Second formal level SVSPC-06-02822 (denied); SVSPD-06-02355; SVSP (denied); 06-03977; SVSPC-07-00214 (GRANTED, RVE REHEARN); Unlisted

Second formal level responses are under VCGCB CLAIM No.: G566872

4. Third formal level IAB CASE No.: 0611035 (Retaliation in section H.6.2)

(denied); IAB CASE No.: 0610668 (denied); relevant info. found in the decision finding of IAB CASE No.: 0509161; Unlisted Third level responses are under VCGCB CLAIM No.: G566872

E. Is the last level to which you appealed the highest level of appeal available to you?

YES (X) NO (X) CDCR RESPONSE NOT EXHAUSTION WITH VCGCB (FROM THIRD FORMAL LEVEL).

F. If you did not present your claim for review through the grievance procedure, explain

why. Any ^{from}residual exhausted claims should not be viewed as 'not presented'. Or the Plaintiff was in fear of further retaliation, including fear for his life, of further retaliation by CDCR.

II. Parties

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

Victor Daniel Soltero K36340, HIGH DESERT STATE PRISON DS-210, P.O. Box 3030, Susanville, CA 96127

B. Write the full name of each defendant, his or her official position, and his or her place of employment.

{ See attached additional page(s) labeled "II Parties, Section B. (defendants) continued". }

{ II Parties, Section B. (defendants) continued. }

(one) Joe Mc Grath, was/is the Secretary of State deputized for the California Department of Corrections and Rehabilitation (CDCR) and is the signatory upon Administrative Bulletin (AB) 05/02 (the protocol for the pilot program). The known address(es) for the California Secretary(ies) is ~~are~~: 1500 11th St., Sacramento, CA 95814 and, the known address for CDCR is: P.O. Box 942883, Sacramento, CA 94283-0001;

(two) Roderick Q. Hickman, was/is the Secretary of CDCR. The known address(es) are the same as in above - (one);

(three) M.S. Evans, was/is the Warden of Salinas Valley State Prison (SVSP), the known address for SVSP is: P.O. Box 1050, Soledad, CA 93960;

(four) G. Ponder, was/is the Facility C Yard Captain at SVSP. The known address is the same as in above - (three);

(five) J. Celaya, was/is the lieutenant of facility C yard at SVSP. The known address is the same as in above - (three);

(six) M. Atchley, was/is the Sergeant of Facility C yard at SVSP. The known address is the same as in above - (three);

(seven) J. Ruelas, was/is an Correctional Officer (%) of Facility C at SVSP. The known address is the same as in above - (three);

(eight) E. Garcia, was/is an Correctional Officer

{II Parties, Section B, p. 2 (defendants) continued }

(8) of Facility C, at SVSP. The known address is the same as in above (three);

(nine) R. Salgado, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(ten) C. Bevins, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(eleven) B. Chavez, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(twelve) D. Moreno, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(thirteen) L. Flowers, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(fourteen) P. Lopez, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(fifteen) R. Briones, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(sixteen) D. Smethers, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(seventeen) R. Lapurga, was/is 8/10, of Facility C, at SVSP. The known address is the same as in above (three);

(eighteen) [REDACTED] Jones, was/is an Sergeant at Facility C, at SVSP. The known address is the same as in above (three);

(nineteen) V. Solis, was/is Correctional Counselor II, of Facility C, at SVSP. The known address is the same as in above (three);

[NOTE: THE NAMES OF ALL THE DEFENDANT(S) RECORDED ON AN VIDEO TAPE ARE

UNKNOWN TO THE PLAINTIFF AT THIS TIME, AND WILL REQUIRE DISCOVERY DISCLOSURE.]

(twenty) J. Stevenson, was/is an Lieutenant,
of Facility 'C', at SVSP. The known address
is the same as in above-(three);

(twentyone) R. Mott, was/is BMU Facilitator,
of Facility 'C', at SVSP. The known address
is the same as in above-(three);

(twentytwo) M. Nilsson, was/is sergeant of
Facility C yard, at SVSP. The known address is
the same as in above-(three).

III. Statement of Claim.

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

(See additional pages) labeled:
 { III Statement of Claim Continued }

IV. Relief.

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

(See additional pages) labeled:
 { III Statement of Claim
 IV Relief Continued }

{ III Statement of Claim, continued }

(ONE) ON OCT. 2, 2006, the defendant (Correctional officer J. Ruelas), "sucker punched" the Plaintiff while the Plaintiff was in mechanical restraints, maliciously and sadistically (which resulted in bruising and swelling) for the very purpose of causing the Plaintiff harm, in violation of the Eight Amendment right secured by the Constitution or law of the United States, and the deprivation (to be free from cruel and unusual punishment) was committed by the said-defendant acting under the color of state law. The force used by the said-defendant, was not justified by any legitimate law enforcement or prison management need, or was completely out of proportion to that need.;

(TWO) The defendant (Correctional Officer E. Garcia) is an accomplice and cohort to the physical attack upon the Plaintiff, in violation of the Eight Amendment of the US. Constitution, for his actions in collaboration with defendant J. Ruelas on Oct. 2, 2006, by physically participating in the attack against the Plaintiff noted at above-(ONE). The deprivation of the Plaintiff's rights, by the defendant (Correctional Officer E. Garcia), was committed by the said-defendant acting under the color of state law. The force

1 used by the said-defendant, upon the Plaintiff,
 2 was not justified by any legitimated law
 3 enforcement or prison management need, or was
 4 completely out of proportion to that need.;
 5

6 (THREE) The defendant (M. Atchley), is the person
 7 whom commenced the melee, and lead the physical
 8 charge ^{against} the Plaintiff and other inmates, on Oct. 2,
 9 2006. The said-defendant performed an illegal
 10 cell-extraction against known protocol, by
 11 commanding the cell #225 door to be opened.
 12 Subsequently entering and removing by means
 13 of physical force, inmates L. Vega #49838,
 14 and Guzman # K82787, with the aid of
 15 other defendants (R. Salgado, C. Blevins,
 16 and B. Chavez) using physical force. The
 17 said-defendants were acting to encourage
 18 and incite the melee, and are accomplice to
 19 the actions of their co-defendants in (ONE)
 20 and (TWO). The said-defendants also assisted
 21 in manufacturing documentation to conceal
 22 and compound a crime.
 23

24 (FOUR) The Plaintiff was an individualist, not
 25 positioned amongst inmates Guzman, nor
 26 Vega, nor involved, but was simultaneously
 27 attacked, as noted at above (ONE), and (TWO).
 28

[NOTE: THE PROTOCOL AND PROCEDURE FOR INMATE(S)]

1 WHO 'HOLD' CUFFS, TRAYS, ect.. AND WARRENTS AN EXT-
 2 RACTION, INCLUDES FIRST CLEARING AND SECURING
 3 THE IMMEDIATE AREA, IN THIS INSTANCE THE DAY ROOM
 4 FLOOR, AMONGST OTHER KNOWN PRONGS SUCH AS:

5 GEARING UP; CHAIN OF SUPERVISORY APPROVAL;
 6 VIDEO MONITORING; EXPLORATION OF OTHER READILY
 7 AVAILABLE ALTERNATIVES... ect.] These defendants)

8 were not acting in any legitimate law enforcement
 9 or prison management need, or was completely
 10 out of proportion to that need. This was an
 11 molee, that the defendants) literally dragged
 12 the Plaintiff into.

13
 14 (FIVE) The defendant (J. Celaya), on Oct 2, 2006,
 15 did move through an 'pack of Correctional Off-
 16 icers' (located between himself and Vega #V49833)
 17 yelling, "... get out the way, get out the way..."
 18 (something to that affect), and performed an Martial
 19 Arts type maneuver on inmate Vega from behind,
 20 slamming inmate Vega onto the concrete.

21
 22 (six) The said-defendant (J. Celaya) was not acting
 23 in any legitimate law enforcement or prison
 24 management need, or was completely out of
 25 proportion to that need. Inmate Vega was
 26 acting in compliance to the commands of his
 27 escorting designates) at the time he was
 28 attacked by the defendant.

1 (SEVEN) The said-defendant (J. Celaya) was an active
2 participant in the melee. The defendant acted and
3 moved in incitement and encouragement of the
4 melee. The defendant is an accomplice to the
5 actions of his co-defendants of the melee. The
6 said-defendant also assisted in the manufact-
7 uring of documentation to conceal and comp-
8 ound a crime.

9
10 (EIGHT) The defendant (D. Moreno), did act in coll-
11 aboration, and was an participant in the melee
12 which occurred on Oct. 2, 2006. The said-defen-
13 dant acted as an accomplice to above-noted
14 (ONE) thru (SEVEN) in facilitating and assisting
15 the actions of their co-defendants). The
16 said-defendant also assisted in the manu-
17 facturing of documentation to conceal and
18 compound a crime.

19
20 (NINE) The defendant (L. Flowers), did act in
21 collaboration, and was an participant in the
22 melee which occurred on Oct. 2, 2006. The
23 said-defendant acted as an accomplice to
24 above-noted (ONE) thru (SEVEN) in facilitating
25 and assisting the actions of the co-defend-
26 ants). The said-defendant also assisted in the
27 manufacturing of documentation to conceal
28 and compound a crime.

1 (TEN) the defendant (P. Lopez), did act in coll-
2 aboration, and was an participant in the melee
3 which occurred on Oct. 2, 2006. The said-
4 defendant acted as an accomplice to above-
5 noted(ONE) thru (SEVEN) in facilitating and
6 assisting the actions of his/her co-defendants).
7 The said-defendant also assisted in the manu-
8 facturing of documentation to conceal and
9 compound a crime.

10
11 (ELEVEN) the defendant (R. Briones), did act
12 in collaboration, and was an participant in
13 the melee which occurred on Oct 2, 2006.
14 The said-defendant acted as an accomplice
15 to above-noted (ONE) thru (SEVEN) in facilitat-
16 ing and assisting the actions of his/her co-
17 defendants). The said-defendant also ass-
18 isted in the manufacturing of documentation
19 to conceal and compound a crime.

20
21 (TWELVE) the defendant (D. Smethers), did act
22 in collaboration, and was an participant in
23 the melee which occurred on Oct. 2, 2006. The
24 said-defendant acted as an accomplice to
25 above-noted (ONE) thru (SEVEN) in facilitating
26 and assisting the actions of his/her co-
27 defendants). The said-defendant also
28 assisted in the manufacturing of docum-

entation to conceal and compound a crime.

(THIRTEEN) The defendant (R. Lapurga), did act in collaboration, and was an participant in the melee which occurred on Oct. 2, 2006. The said-defendant acted as an accomplice to above-noted (ONE) thru (SEVEN) in facilitating and assisting the actions of his/her co-defendants). The said-defendant also assisted in the manufacturing of documentation to conceal and compound a crime.

[NOTE: THE EXHIBIT FOR (ONE) thru (THIRTEEN) IS EXHIBIT 'B' of 42 USC 1983 COMPLAINT FILED AUG 20, 2007, IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

(PERSONAL)
THE PLAINTIFF WAS NOT ABLE TO MAKE COPIES OF THIS COMPLAINT AND GIVES NOTICE, FROM THE DATE OF THE COURT ORDER MARCH 10, 2008, TO THIS DATE MARCH 26, 2008, ^{THIS} COMPLAINT FOWARD TO THE COURT. THE LAW LIBRARY HERE IN ADMINISTRATIVE SEGREGATION FOR BUILDING D-5, HAS NOT BEEN OPERATIVE. THIS DENIES THE PLAINTIFF ACCESS TO MAKE COPIES. PLEASE TAKE INTO CONSIDERATION, THAT AN PEN FILLER AND BLANK PAPER IS THE ONLY MATERIAL THE PLAINTIFF HAD ACCESS TO FOR PREPARATION AND COMPOSITION OF THIS COMPLAINT.]

(FOURTEEN) The defendant (G. Ponder~~W~~) acting in collaboration, deliberately abused policy and procedures to retaliate against the Plaintiff for filing grievances, in violation of the first, fifth, fourteenth, and eighth Amendment rights secured by the Constitution or law of the United States, and the deprivation of the Plaintiff's rights, was by the said-defendant acting under the color of state law. The said-defendant did conspire and manufacture false documentation for the purpose of maliciously causing harm upon the Plaintiff, which include numerous Rules Violation Reports 115 (RVR 115's), Behavior Modification Unit (BMU) placements, Administrative Segregation (ASU) placements ('hole'), and vindictive/malicious labeling of the Plaintiff with stigmatization(s) of known taboo criterion, in the California prison system, General Population (namely, pseudo-"safety concerns/Protection", "Organized Criminal Activities...ect."), which resulted in an attempted murder upon the Plaintiff.

1 (fifteen) On October 2, 2006, then and there,
2 right-after the physical altercation descri-
3 bed at-(ONE), the Plaintiff was taken directly
4 to the program Office area, and taken before
5 the committee (in the program office area), where
6 the defendant (G. Pender~~er~~) was the chairman
7 of the committee. Simply put, the Plaintiff
8 was ruffed up by the staff and taken before
9 the committee, under subsidiary terms.
10 (see Exhibit Amend C.)

11
12 (sixteen) In the presence of the commi-
13 tee, at the Oct 2, 2006 hearing noted-above,
14 the Plaintiff found himself distraught and in
15 dismay by the events of the staff and com-
16 mittee's actions, and requested that the
17 hearing be held in absentia. (see Exhibit Amend C).
18 The plaintiff was returned to his cell.

19 (seventeen) At some point in time, sub-
20 sequent to the physical altercation
21 noted at (one), an Medical Tech. reported
22 the staff misconduct. The defendant
23 (sergeant M. Atchley) at sometime during
24 the night of October 2, 2006, was accom-
25 panied by approximately 15 uniformed
26 employees of CDCR, removed the
27 Plaintiff from his assigned living quarter,
28 to the program area. In an threatening manner.

(eighteen) In route from the Plaintiff's assigned living quarter, to the program office area, an uniformed employee held an video camera and recorded the following events:

(a) The Medical Tech. (name unknown to the plaintiff) is recorded on the video tape examining the swelling and bruising on the back of the Plaintiff's head, where he was "sucker punched". And is recorded filling out Medical reports, which are missing;

(b) The defendants (Sergeant Atchley and Sergeant Jones), and the mob of uniformed employees (names unknown), are recorded visually and audibly attempting to conceal and compound the events of staff misconduct by threatening and intimidating the Plaintiff, to acquire a statement in coercion. Having the Plaintiff denounces the Medical Tech's reporting of the Oct. 2, 2006 staff misconduct;

(c) The said-video recording, recorded exactly what was said, and by whom;

(d) This was not the known procedure. (AR 4a or 4b.)

[NOTE: THE THREATS, AND CONTENT OF THE THREAT(S), WERE

LATER CARRIED OUT AMONGST THE RETALIATIONS AND

1 REPRISALS AGAINST THE PLAINTIFF].

2
3 (nineteen) the defendant (G. Ponder) was/is
4 the Captain of SVSP, 'C' Facility, on Oct. 2, 2006.
5 Under his command, the Plaintiff was held in
6 his assigned cell 228, building C8, at SVSP,
7 for two weeks after the physical altercation
8 noted at (ONE). This is known as "being sat on",
9 an control factor to conceal and compound. It
10 is not the known procedure.

11
12 (twenty) The Plaintiff, on October 16, 2006,
13 was placed in administrative segregation by
14 the defendant (J. Celaya), with pseudo-safety
15 ty concerns. And the 'decision' for the place-
16 ment under the fictitious and stigmatic
17 'reason for placement', was made by the
18 defendant (G. Ponder). (see Exhibit Amend 'E'.)

19
20 (twenty one) On Oct 26, 2006, the Plaintiff
21 appeared before the SVSP's, ASU Institutional
22 Classification Committee (ICC), for ASU
23 placement review. The Plaintiff emphatically
24 denied having any 'safety' concerns. (see Exhibit
25 Amend. 'A').

26
27 (twenty two) The Investigative Security
28 Unit (ISU), investigated, and completed

the investigation on 12.5.06, into the 'reason for placement' of the Plaintiff in ASU (noted above) and the reason for placement was found to be untrue. (see Exhibit Amend 'B').

(twenty three) On Dec. 12, 2006, the Plaintiff was returned to Facility 'C', SVSP, by ICC. The Plaintiff was placed officially back into the BMU on Dec. 13, 2006, by SVSP, Facility 'C', Unit Classification Committee (UCC). The defendant () Celaya was the chairman. (see Exhibit Amend 'B').

(twenty four) The Plaintiff remained in the BMU until March 26, 2007, **when** the defendants (G. Pandoers, V Solis, J. Stevenson, et al.) acting in collaboration, abused policy and procedures, in retaliation, when they placed and held the Plaintiff in ASU until the Plaintiff was transferred to High Desert State Prison in Sept. of 2007. (see Exhibit Amend 'D' and Amend 'F'.)

(twenty five) The pretext for the Plaintiff's March 26, 2007, ASU Placement by the above-named defendants was "... refusal to participate in the interview process..." (see Exhibit Amend 'D'.) "... and posed

1 a threat. "[NOTE: FACTUALLY, THERE WAS NO THREAT, NOR WAS
 2 ANY THREAT EVER NAMED, WHICH THE PLAINTIFF ACTUALLY
 3 POSED. NOTE: KEEP IN MIND, THE PLAINTIFF WAS PLACED
 4 IN ASU FOR NOT INTERVIEWING.]".

5 (twenty six) the said defendants (noted above)
 6 'mercurialness', as to the reason for the Plaintiff's
 7 ASU placement, is revealed on the 128G, of Aug.
 8 9, 2007, which states in part, "... during his
 9 placement in BMU he disrupted the program
 10 by shouting out of his cell for others not to
 11 participate in the program. Since his removal
 12 from the GP the program has been running
 13 ..., has an strong influence over the southern
 14 hispanic population." [THIS IS MISINFORMATION AND
 15 MENDACITY.]

16
 17 (a) The reference(s) in the above-noted 128G
 18 of 8-9-2007, are an interpolation of an 128B
 19 dated 5-01-2007. (See Exhibit Amend. 'D');
 20

21 (b) The above-noted 128B of 5-01-2007, is an int-
 22 erpolation of an 3-23-2007, RVR 115#C07-03-0024,
 23 Authored by Motts. (See Exhibit Amend. 'G');
 24

25 (c) The Plaintiff was found 'not Guilty' of the
 26 above-noted RVR 115@ (b), the factors were
 27 proven to be untrue, upon adjudication.
 28 (See Exhibit Amend. 'G').

(d) Both Inmates, Hart # H88709 and, Sneed # J37911, are not Southern Hispanic Inmates, in fact they are black folk (see Exhibit Amend. 'G.');

(e) The defendants (G. Ronders, V. Solis, et al.) moved ahead with this false documentation, knowing it was not true, and fully aware of the above-noted factor(s) (a) thru (d). (see the 8-9-2007, 128G, previously forward forward in 'expedite motion!');

(f) Recorded on the 8-9-2007, 128G, is the signatures of the defendants, in acknowledgment of the RVR(s) disposition, "...dismissed in the interest of justice";

(g) At Exhibit Amend F, is the 128G of 7-5-2007, noting "...extension to complete disciplinary process...", and in the 'DISCIPLINARY HISTORY' section, the identification of the pending disciplinary, "failure to meet program expectations (PENDING), willfully resisting a Peace Officer";

(h) From Dec 13, 2006, to March 26, 2007, (see twentythree) and, (twentyfour), when Plaintiff was in the BMU. The BMU was up and running. Interestingly enough, the Plaintiff has found

1 that in the Administrative Bulletin AB 05/02
 2 (the protocol for the pilot program. BMU.), it
 3 states that records of the BMU are forward to
 4 the Director of High Security CDCR.

5
 6 (twenty seven) The Plaintiff based his decision
 7 not to interview ('Prison snitch') on an CDCR,
 8 Sacramento Inmate Appeal Branch (IAB)
 9 response, IAB Case No.: 05-09161, which
 10 states in part, "...there is no regulation which
 11 allows staff to discipline an inmate for
 12 refusing to interview or for not signing an
 13 promise to behave chrono..". Correspondences
 14 copies were forward to the warden and
 15 SVSP appeals coordinator.

16
 17 (twenty eight) The basic gist of the phrase,
 18 "Recurring Failure to meet Program
 19 Expectations" (i.e. not signing) amounts to:
 20 (1.) Prison snitch or (2.) conceding to
 21 'Organized Criminal Gang activity'. The
 22 Plaintiff simply did not want to be villain-
 23 ized, nor stigmatized.

24
 25 (twenty nine) The KVR 115 # C07-01-0014,
 26 for, "recurring failure to meet program expect-
 27 ations", authored by the defendant (R. Mott)
 28 on 1-11-2007, was subsequent to the

1 IAB Case No.: 05 09161 response, and an
 2 abuse of policy and procedure to retaliate
 3 against the Plaintiff. (see Exhibit Amend. 'H-1').
 4

5 (THIRTY) The RVR 115 # COG-10-0017, for
 6 "recurring failure to meet program expectations",
 7 authored by the defendant (V. Solis) on 10-2-2006,
 8 was subsequent to the IAB Case No.: 05 09161
 9 response, and an abuse of policy and procedures
 10 to retaliate against the Plaintiff. (see Exhibit Amend. 'H-2')
 11

12 (THIRTY ONE) The RVR 115 # COG-12-0047, for
 13 "recurring failure to meet program expectations",
 14 authored by ~~the~~ the defendant (B. Chavez) on
 15 12-26-2006, was subsequent to the IAB Case
 16 No.: 05 09161, response, and an abuse of
 17 policy and procedure to retaliate against
 18 the plaintiff. [NOTE: DEFENDANT (B. CHAVEZ) CLAIMED
 19 HE NEVER AUTHORED THE RVR, AND IT WAS UNKNOWNST.]
 20 (see Exhibit Amend. 'H-3')

21 (THIRTY TWO) The 128 B chrono, for "recurring
 22 failure to meet program expectations", authored
 23 by the defendant (G. Pandor) on 8-23-06,
 24 was subsequent to the IAB Case No.: 05 09-
 25 161 response, and an abuse of policy and
 26 procedure to retaliate against the Plaintiff.
 27 (see Exhibit Amend. 'H-4')

28 (THIRTY THREE) The 128 A chrono, for recurring

1 failure to meet program expectations", auth-
2 ored by the defendant (M. Nilsson) on 12.28.
3 2006, was subsequent to the IAB Case No. 05-02161
4 response, and an abuse of policy
5 and procedure to retaliate against the
6 Plaintiff. (see Exhibit Amend. H-5').

7
8 ()

1 (THIRTYFOUR) Please take notice that prior to the
2 noted deprivations, the defendant (G. Ponder)
3 effectively used an 'attack' ("attempted murder
4 of Correctional Officers"), as an guise to
5 mask and proffer an alterior agenda, as well
6 as justify abuse.

7
8 (THIRTYFIVE) The use of an reinforcement strategy
9 by the defendant (G. Ponder) is no psycholog-
10 ical marvel. Never the less, it is quite effect-
11 ive. Sow an advantage... reap an habit. Using
12 misinformation and mendacity, the said-defe-
13 manufactured memorandums dated November
14 14, 2005, and December 29, 2005. These memo-
15 randums were distributed amongst the
16 staff, for the purpose of reinforcing pre-
17 judice and animosity in contra of the
18 Plaintiff. The memorandums interpolate the
19 July 14, 2005, 'attack' noted above, the
20 Plaintiff name(d), and a determination of
21 a threat the Plaintiff posed.

22
23 (THIRTY SIX) Sorting through the many prongs
24 of the defendant(s) efforts to compound and
25 conceal, the Plaintiff has found it simpler to
26 articulate the discernment of facts by
27 application of 'The Principals) of entail-
28 ment'. Where we can now discern the

the defendants actions of deprivation, are
contrary to the principals of Entailment.

(THIRTYSEVEN) Factually, the Plaintiff had
absolutely nothing to do with the 'attack'
noted-above, nor any knowledge of the
occurance, other then that provided on
the said-memorandums. The plaintiff was
not in or around that location, and there is
no basis, offer of proof, substantiation, nor
evidence in connection with the Plaintiff.

(THIRTYEIGHT) Nor, was/is there any grounds
for questioning or interviewing the Plaintiff
in connection to the said-matter. Curiously
enough, the defendant (G. Ponder) was well
aware of these facts.

(THIRTYNINE) The said-defendant was
attempting to involve the Plaintiff in
"snitching", against the Plaintiff's will, by use
of an smear campaign and submission tactics.
The Plaintiff has no obligation to act as an
Agent, Informant, nor Operative, to coll-
ect and gather information for the state.

(~~_____~~) ~~Had~~

1 (FORTY) subsequent to the above-noted
 2 11-14-05, and 12-29-2005, memorandums, and
 3 the IAB Case No. 05 09161 response, the
 4 defendant (G. Rando) retaliated against the
 5 Plaintiff, by placing the Plaintiff in the BMU.
 6 The defendant(s) combed the Plaintiff's central
 7 file (C-file) and retroactively used an '2002
 8 riot', as the pretext for the BMU placement
 9 of the Plaintiff.

10
 11 (FORTYONE) Under the above-said dub-
 12 ious and highly suspect conditions, the
 13 Plaintiff sought the known safeguard
 14 protection under the law. The Plaintiff
 15 contacted and forward a copy of the SVSP
 16 BMU 'Orientation Booklet, General Rules and
 17 Procedure', to the Office of Administrative
 18 Law (OAL), in re: California Penal Code
 19 (d)(1)(C), and Government Code 11340.

20
 21 (FORTY TWO) The OAL return correspondence
 22 revealed the "conditions' for an authorized
 23 pilot program had not been met. (see Exhibit
 24 Amend.). The OAL correspondence states,
 25 "... The Office of Administrative Law
 26 cannot identify any regulations on point...".
 27 (see Exhibit Amend.). The BMU at SVSP was
 28 operating pursuant to 'Underground' regulations.

(See Exhibit(s) Amend. 'K-1', Amend. 'K-2', and Amend. 'K-3').

(FORTY THREE) The defendant (Roderick Q. Hickman), is/was the custodial gaurdian of the Plaintiff, and is responsible for the welfare of the Plaintiff, as well as the operations) of the California Department of Corrections and Rehabilitation (CDCR), and its staff and employees.

(FORTY FOUR) The defendant (Joe McGrath), is/was also an higher-level custodial gaurdian of the plaintiff, and is responsible for the welfare of the Plaintiff, as well as the operation(s) of CDCR, its staff and employees.

Said-defendant is also the signatory (signor) of the Administrative Bulletin (AB) 05/02.

(the protocol for the pilot program, Behavior Modification Unit (BMU)).

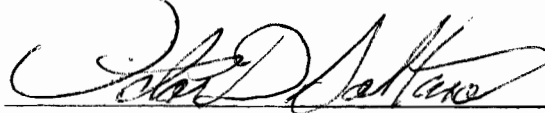
(FORTY FIVE) the defendant (MS. Evans), is also an higher-level custodial gaurdian of the Plaintiff, and responsible for the welfare of the plaintiff, as well as the operation(s) of Salinas Valley State Prison (SVSP), its staff and employees. The said-defendant is also the signatory (signor) of the

SVSP-BMU 'Orientation Booklet, General Rules and Procedures'. Also an signature (signer) of memorandum Dec. 29, 2005. (see Exhibit Amend. I).

{ V
See memorandum of points and authorities in support of ^{complaints} ~~claim~~ }

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26 day of March, 2008.

A handwritten signature in cursive script, appearing to read "John D. [unclear]", written over a horizontal line.

(Plaintiff's signature)

IV
§ 1983 continued 3

(1) THE ASSISTANCE OF THE ATTORNEY GENERAL'S
OFFICE, AND ATTORNEY GENERAL, IN COMPLIANCE
~~WITH 42 USC 1997~~ TO REMEDY THE 'MINIMUM
STANDARD OF HUMAN DECENCY' ISSUE(S), AND THE
CONSTITUTIONALLY GUARANTEED MINIMA DEP-
RIVATION(S) IN THE CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION (CDCR);

(2) THE SAFEGUARD PROTECTION BY THE OFFICE
OF ADMINISTRATIVE LAW, TO REDRESS THE
REGULATION INADEQUACIES OF CDCR'S
"Underground" REGULATIONS;

(3) THE CALIFORNIA DEPARTMENT OF CORRE-
CTIONS AND REHABILITATION (CDCR), OR IF
NECESSARY AN APPOINTEE 'MASTERS' TO
REMOVE THE STIGMATIC AND RETALIATORY
MATERIAL FROM THE PLAINTIFF'S FILE;

(4) JUST COMPENSATION AND MONETARY DAMAGES
TO BE PAID BY THE DEFENDANT(S) IN THEIR
PERSONAL AND/OR PROFESSIONAL CAPACITY,
INDEPENDANTLY OR AS AN WHOLE (WHICHEVER
IS DEEMED APPROPRIATE FOR EACH INSTANCE),
FOR THE FOLLOWING AMOUNT AND REASON
SET FORTH:

(a) FOR THE ABUSE(S) OF POLICY AND PROCEDURE(S)

1 IN RETALIATION AGAINST THE PLAINTIFF, WHERE
 2 THE DEFENDANT(S) VINDICTIVELY AND MALICIOUSLY
 3 STIGMATIZED THE PLAINTIFF WITH KNOWN TABOO
 4 CRITERION, FOR THE DELIBERATE PURPOSE OF
 5 CAUSING THE PLAINTIFF HARM. AND THEN, DID
 6 RESULT IN AN ATTEMPTED MURDER (MULTIPLE
 7 STABS AND GASHING INJURIES) UPON THE
 8 PLAINTIFF, THE AMOUNT OF \$5,000,000⁰⁰;

9
 10 (b) FOR THE DEFENDANT(S) PHYSICAL ABUSE OF
 11 THE PLAINTIFF, BY 'SUCKER PUNCHING', AND
 12 RUFFING UP THE PLAINTIFF, CAUSING BRUISING,
 13 AND SWELLING TO THE BACK OF THE PLAINTIFF'S
 14 HEAD. THE AMOUNT OF \$1,000,000⁰⁰;

15
 16 (c) FOR EACH DAY THE PLAINTIFF SUFFERED IN THE
 17 SVSP-BMU, RESULTING FROM THE ABUSE OF
 18 POLICY AND PROCEDURE(S) ^{IN RETALIATION} AND/OR PURSUANT
 19 TO 'UNDERGROUND' REGULATIONS, THE AMOUNT
 20 OF \$100⁰⁰ FOR EACH DAY, FROM EACH DEFEND-
 21 ANT APPLICABLE;

22
 23 (d) FOR EACH DAY THE PLAINTIFF SUFFERED IN
 24 THE SVSP-ASU, RESULTING FROM THE ABUSE
 25 OF POLICY AND PROCEDURE(S) BY THE DEFEN-
 26 DANT(S) IN RETALIATION. THE AMOUNT OF,
 27 \$100⁰⁰ FOR EACH DAY, FROM EACH DEFENDANT.
 28

(5) FOR CDCR TO ISSUE MANUAL(S) AND PROVIDE TRAINING TO ITS EMPLOYEE(S) IN REGARD TO THE FOLLOWING:

(a) PROHIBITION OF RETALIATION;

(b) THE PROCEDURES FOR PROMULGATION AND PROCEDURAL REQUIREMENTS FOR ENVISIONED REGULATION(S) AND ORDINANCE;

(c) IDENTIFY(ING) AND MAKING KNOWN THE 'MINIMUM STANDARD OF HUMAN DECENCY', AND 'CONSTITUTIONALLY GUARENTEED MINIMA'.

(6) Attorney fees) to be paid to Plaintiff, in the amount of \$25,000⁰⁰ from each defendant.

V. MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF COMPLAINT.

KNOW YOUR RIGHTS ASSAULT AND EXCESSIVE FORCE

ACLU NATIONAL PRISON PROJECT

Much of the following information was taken from a book by John Boston & Daniel Manville called the Prisoners' Self-Help Litigation Manual (3d ed. 1995).

Important Note: The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

Protection from Assault

Prison officials have a legal duty to refrain from using excessive force and to protect prisoners from assault by other prisoners. "Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society." See Farmer v. Brennan, 511 U.S. 825, 833 (1994). However, prison officials are not automatically responsible for all assaults on prisoners, and a prison official's use of force does not automatically violate the Constitution. Courts apply different rules to decide whether the Eighth Amendment has been violated after an assault by a prisoner or a use of force by prison staff.

Assault by Another Prisoner

Prison officials may be held liable under the Eighth Amendment only if they act with "deliberate indifference" or "reckless disregard" for a prisoner's safety. See id. at 836-37. In other words, prison officials may be liable if they knew that a prisoner was at substantial risk of serious harm, but ignored that risk and failed to take reasonable steps to protect the prisoner. See id. at 847. Generally, courts have distinguished between a substantial risk of serious harm (or strong likelihood of injury) and the everyday risk of harm that comes from being in prison (or mere possibility of injury). See, e.g., Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990). In addition, even when a prisoner is harmed, if prison officials responded reasonably to the risk, they are not held liable. Farmer, 511 U.S. at 844-45. Courts often dismiss isolated failures to protect as "mere negligence," even when prison officials had prior information about a threat to a prisoner, but failed to act on that information. See Davidson v. Cannon, 474 U.S. 344, 347-48 (1986).

There are two ways to show deliberate indifference in a prisoner assault case. One is to show that prison officials failed to respond or act reasonably in light of a particular threat of danger to an individual prisoner. See, e.g., Odom v. South Carolina Dep't of Corr., 349 F.3d 765, 772 (4th Cir. 2003) (plaintiff warned officer that other prisoners would try to kill him); Scicluna v. Wells, 345 F.3d 441, 445 (6th Cir. 2003) (plaintiff testified he had told unit manager of risk of assault by his

co-defendant); Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003) (failure to monitor prisoner known to be violent is deliberate indifference); Peate v. McCann, 294 F.3d 879 (7th Cir. 2002) (plaintiff attacked twice by the same prisoner); Cantu v. Jones, 293 F.3d 839 (5th Cir. 2002) (guards allowed prisoner out of his cell to attack another prisoner); Horton v. Cockrell, 70 F.3d 397 (5th Cir. 1995) (staff failed to protect prisoner from attack despite his grievances requesting protection); Swofford v. Mandrell, 969 F.2d 547, 549 (7th Cir. 1992) (guards put sex offender in unsupervised holding cell). The other is to show prison conditions or practices that create a dangerous situation for prisoners in general. See, e.g., Butler v. Dowd, 979 F.2d 661, 675 (8th Cir. 1992) (en banc) (random housing assignments of vulnerable prisoners and obstacles to admission to protective housing); Skinner v. Uphoff, 234 F.Supp. 2d 1208 (D. Wyo. 2002) (de facto policy of failing to investigate assaults). Sometimes both theories apply to the same fact situation.

In addition to showing deliberate indifference, a prisoner must show that the actions or practices of prison officials actually caused the assault. There must be a connection between what prison officials did or failed to do and the harm that occurred. See Best v. Essex County, 986 F.2d 54, 56-57 (3rd Cir. 1993). Thus, courts have imposed liability on line correctional officers who observed an assault or knew of a risk to a prisoner, but did nothing, see, e.g., Ayala Serrano v. Lebron Gonzales, 909 F.2d 8, 14 (1st Cir. 1990); on higher-level supervisors who made or failed to make policies, or failed to act on risks they knew about, see, e.g., Redman v. County of San Diego, 942 F.2d 1435, 1447-48 (9th Cir. 1991); and on city or county government when a prisoner's assault resulted from a governmental policy, see, e.g., Berry v. City of Muskogee, 900 F.2d 1489, 1497-99 (10th Cir. 1990). Courts require prisoners to show how individual named defendants are responsible for causing the assault. Morales v. New York State Dep't of Corr., 842 F.2d 27, 29-30 (2nd Cir. 1988) (explaining how several defendants were liable in the same incident).

Use of Force by Prison Staff

With respect to convicted prisoners, prison staff violate the Eighth Amendment when they use force "maliciously and sadistically for the very purpose of causing harm," but they are permitted to use force "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). Courts apply different legal standards to arrestees, pre-trial detainees, and convicted prisoners; however, an inmate generally must show that the force used was not justified by any legitimate law enforcement or prison management need, or was completely out of proportion to that need. See Graham v. Connor, 490 U.S. 386, 397 (1989) (arrestees); Hudson, 503 U.S. at 5-6 (convicted prisoners).

The amount of force that courts consider excessive depends on the specific fact situation. As a general rule, however, the force used by prison staff must be more than *de minimis* (very small or insignificant) to violate the Eighth

Amendment. See Hudson, 503 U.S. at 9-10. Courts disagree on what constitutes a *de minimis* use of force. Compare Hudson, 503 U.S. at 10 (kicks and punches resulting in bruises, swelling, loosened teeth and a cracked dental plate are not *de minimis*) and Riley v. Dorton, 115 F.3d 1159, 1168 (4th Cir. 1997) (sticking pen a quarter of an inch into a detainee's nose, threatening to rip it open and using medium force to slap his face is *de minimis*). If there is a legitimate need to use force and no intent to cause unnecessary harm, prison staff can use serious and even deadly force without violating the Constitution. See, e.g., Whitley v. Albers, 475 U.S. 312, 322-26 (1986) (use of shotgun in riot/hostage situation). However, when no such legitimate need exists, courts will be more likely to find an Eighth Amendment violation. See, e.g. Treats v. Morgan, 308 F.3d 868, 872 (8th Cir. 2002) (use of pepper spray on a prisoner who "had not jeopardized any person's safety or threatened prison security" provided valid basis for Eighth Amendment claim).

However, prisoners do not need to show a serious or permanent injury to establish an Eighth Amendment violation. The extent of the injury is simply one factor to consider in deciding whether staff acted maliciously and sadistically or in good faith. See Hudson, 503 U.S. at 7-9. Establishing malice does not require direct proof of what was in an officer's mind. Prison staff's actions alone, in light of the circumstances, may be sufficient to show malice. See Thomas v. Stalter, 20 F.3d 298, 302 (7th Cir. 1994). Moreover, sexual abuse or rape of a prisoner by staff is, by definition, a "malicious and sadistic" use of force. Smith v. Cochran, 339 F.3d 1205, 1212-13 (10th Cir. 2003).

KNOW YOUR RIGHTS

DISCIPLINARY SANCTIONS AND PUNISHMENT

ACLU National Prison Project

Important Note: The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

Examples of disciplinary punishment

Examples of disciplinary punishment include: physical punishment, punitive segregation, losing visitation privileges, restricting visitation privileges, monetary restitution, water deprivation, reducing shower privileges and extending sentences. You may not have received a disciplinary hearing before receiving this type of punishment or, if you did, it may not have been a fair hearing. Unfortunately we do not have the resources to assist the many prisoners who have written us about these sorts of problems. We can, however, provide the following information.

Challenging the Nature of the Punishment You Received

Courts give deference to prison officials' decisions about disciplinary punishment. Punishments that fulfill legitimate penological interests (e.g., rehabilitation and crime prevention) are generally upheld. The Supreme Court has provided four factors to decide whether prison regulations violate the Constitution.¹ These factors are: (1) whether the regulation has a "valid, rational connection" to a legitimate governmental interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the right would have on guards and inmates and prison resources; and (4) whether there are "ready alternatives" to the regulation.²

For example, the Supreme Court has held that a prison administration's decision to restrict visitation for prisoners with two substance abuse violations served the legitimate goal of deterring drug and alcohol use within prison.³ The Court found that the punishment fulfilled the four evaluation factors listed above although the ban on visits from people other than clergy and attorneys on official business lasted a minimum of two years.⁴

Monetary restitution for property damage or other offenses that cost the prison money is

¹ See Turner v. Safley, 482 U.S. 78, 89-91 (1987).

² Id.

³ Overton v. Bazzetta, 539 U.S. 126 (2003).

⁴ Id.

a permissible form of punishment.⁵ Because many prisons have various “tiers” or “levels” of discipline, with different punishments for each, prisoners who commit the same violation may receive different punishments. However, disparities in punishment do not necessarily violate constitutional rights unless the challenged punishment can be proven to be arbitrary.⁶

Although courts would find most punishments with legitimate penological interests constitutional, they have found punishments that involve physical abuse or degrading conditions of punitive confinement unconstitutional.⁷ Although courts are reluctant to interfere with the administration of prisons, they probably will dislike punishments that are disproportionate, or that offend idealistic concepts of dignity, civilized standards, humanity and decency.⁸ However, courts rarely find prison punishments disproportionate.⁹

Challenging the Disciplinary Sanction Itself

Prisoners may challenge disciplinary sanctions imposed on them under the Due Process Clause of the Fourteenth Amendment.¹⁰ The Supreme Court has said that inmates are not entitled to hearings (or other due process procedures) for disciplinary punishments unless (1) there is a state-created liberty interest in freedom from such punishment, and (2) the punishment imposes atypical and significant hardship.¹¹ The Supreme Court has not fully defined “atypical and significant hardship.” Most circuits have found that administrative segregation without more does not rise to the level of an atypical and significant hardship.¹² However, in Wilkinson v. Austin, the Supreme Court concluded that being sent to a supermax facility with limited human contact for an indefinite sentence and with no opportunity for parole does satisfy the “atypical and

⁵ Longmire v. Guste, 921 F.2d 620, 623-24 (5th Cir. 1991).

⁶ Phillips v. Gathright, 603 F.2d 219 (4th Cir. 1979).

⁷ Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968) (Eighth Circuit enjoined the use of the strap until proper regulations and safeguards against abuse were implemented).

⁸ Id.

⁹ See, e.g., Savage v. Snow, 575 F.Supp. 828, 836 (S.D.N.Y. 1983) (upholding 90 days loss of good time and confinement in segregation for abuse of correspondence).

¹⁰ Prisoners may also base their challenges on state law grounds, citing state prison regulations or statutes. State prisoners seeking to invalidate an unlawful criminal conviction or sentence must generally first exhaust their state court remedies, then seek federal court relief through a writ of habeas corpus. Only if the conviction or sentence is overturned may the prisoner-plaintiff then pursue a damages action for an unlawful conviction or sentence under 42 U.S.C. § 1983. See Heck v. Humphrey, 512 U.S. 477, 486, 114 S.Ct. 2364, 2372 (1994).

¹¹ Sandin v. Conner, 515 U.S. 472 (1995).

¹² See Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997); Mackey v. Dyke, 111 F.3d 460 (6th Cir. 1997); Pichardo v. Kinker, 73 F.3d 612 (5th Cir. 1996); Luken v. Scott, 71 F.3d 192 (5th Cir. 1995).

significant hardship" test.¹³

Once a prisoner asserts that the discipline imposed is significant and atypical, he or she must still establish that the procedures in place were inadequate. To make this determination, a court must consider three factors: (1) the private interest involved; (2) the risk of an erroneous deprivation of such interest and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the burdens that different or additional procedural requirements would entail.¹⁴ For example, although the Supreme Court concluded in Wilkinson v. Austin that being sent to a supermax facility *could* violate the Due Process clause, it ultimately concluded that the procedural safeguards were sufficient, and that there was no constitutional violation. In reaching this decision, the Court put much emphasis on the fact that the prisoner was given notice and an opportunity to be heard, and was provided with many opportunities to challenge an erroneous Supermax placement.¹⁵

The Supreme Court has held that prisoners cannot sue for monetary damages under 42 U.S.C. § 1983 for loss of good time until they get their disciplinary conviction set aside through the prison appeal system or in state court.¹⁶ *FLFA*

¹³ 125 S.Ct. 2384, 2394-95 (2005).

¹⁴ Id.

¹⁵ Id. at 2395-98.

¹⁶ Edwards v. Balisok, 520 U.S. 641 (1997).

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FILED

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COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983

Name Soltero, Victor

(Last)

(First)

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(Initial)

Prisoner Number CDCR # K36340

Institutional Address Salinas Valley State Prison D9-173

PO Box 1050, Salinas, CA 95960

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Victor Daniel Soltero

(Enter the full name of plaintiff in this action.)

vs.

Case No.

(To be provided by the clerk of court)

JOE MC GRATH; M.S. EVENS; G.

PONDERS; J. RUELAS; AND SOME
OR ANY PERSONS NAMED THEREIN SUPPORTING
DOCUMENTS (SEE VCGCB CORRESPONDANCE
INCLOSED AS EXHIBIT A) WHOSE FUTURE
APPOINTED COUNSEL PER 42 U.S.C 1983,
AND/OR 42 U.S.C. 19976(a) MAY DEEM
APPROPRIATE.

(Enter the full name of the defendant(s) in this action)

COMPLAINT UNDER THE
CIVIL RIGHTS ACT, (PR)
42 U.S.C §§ 1983

[All questions on this complaint form must be answered in order for your action to proceed..]

I. Exhaustion of Administrative Remedies

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement _____

B. Is there a grievance procedure in this institution?

YES (X) NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES (X) NO ()

D. If your answer is YES, list the appeal number and the date and result of the appeal at

IAB CASE NO. 0610668 LOCAL LOG NO. 5VSP 07-00214
AND APPEAL(S) FOUND AT GOVT. CLAIMS PROGRAM VCGCB
400 R STREET 5th floor. SACRAMENTO, CALIFORNIA 95814.
COMPLAINT
CLAIM NO. 6566872. (SEE EXHIBIT A, RC:
GOVT. CODE SECTION 955.4 SERVICE OF SUMMONS AND
COMPLAINT.)

FILED

07 AUG 20 AM 11:23

E-Filing

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICTOR DANIEL SOLTERO

Plaintiff,

CASE NO.

4256

VS.
JOE MCGRATH; MS. EVENS; G. PONDERS; J.
EUGELAT; AND SOME OR ANY PERSON(S) NAMED
THEREIN SUPPORTING DOCUMENTS (SEE
VCECB CORRESPONDANCE IN EXHIBIT A OF
COMPLAINT UNDER THE CIVIL RIGHTS ACT 42 USC
1983) WHOM FUTURE APPOINTED COUNSEL
PER 42 USC 1983 AND/OR
42 USC 1997 MAY DEEM APPROPRIATE.

Defendant.

PRISONER'S
APPLICATION TO PROCEED
IN FORMA PAUPERIS

PJH

(PR)

I, VICTOR DANIEL SOLTERO declare, under penalty of perjury that I am the plaintiff in
the above entitled case and that the information I offer throughout this application is true and correct.
I offer this application in support of my request to proceed without being required to prepay the full
amount of fees, costs or give security. I state that because of my poverty I am unable to pay the
costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes ___ No X

If your answer is "yes," state both your gross and net salary or wages per month, and give the name
and address of your employer:

Gross: _____ Net: _____

Employer: _____

If the answer is "no," state the date of last employment and the amount of the gross and net salary

EXHIBIT
Amend. 'A'

CALIFORNIA DEPARTMENT OF CORRECTIONS

NAME: SOLTERO

CDC #: K36340

BED: D-9-166L

COMMITTEE ACTION SUMMARY

REFER TO THE CSR FOR A 45 DAY ASU EXTENSION TO COMPLETE THE INVESTIGATION RELATIVE TO ENEMY CONCERNS. RETAIN IN ASU PENDING CSR REVIEW AND COMPLETION OF THE INVESTIGATION. ESTABLISH MAX CUSTODY AND WG/PG OF D2D EFFECTIVE 10/16/2006, DUE TO THE SUBJECT BEING ON C STATUS PRIOR TO PLACEMENT IN ASU. CLEAR FOR SINGLE CELL AND WALK ALONE YARD. PSYCH IS CLEAR.

COMMITTEE'S COMMENTS

Inmate SOLTERO appeared before Salinas Valley State Prison's (SVSP's) Administrative Segregation Unit (ASU) Institutional Classification Committee (ICC) today for his Initial ASU Review. SOLTERO stated that his health was good and was willing to proceed. SOLTERO received his 72-hour notice for the purpose of this review. Prior to committee reviewing and discussing this case, SOLTERO was introduced to the committee members.

According to SOLTERO'S CDC 114D, he was placed into SVSP's ASU on 10/16/2006 for: Protect the integrity of a preliminary investigation into threats the subject may have received on his life which would endanger the safety and security of the institution.. ICC notes SUBJECT'S ASU placement was ordered by Lieutenant J. Celaya. The placement was ordered due to protect the integrity of an ongoing investigation. The CDC 114D was issued to SUBJECT within 48 hours of ASU placement. Confidential information was not used for this ASU placement. The Administrative review was held by Captain G. Ponder. A staff Assistant was not assigned. SUBJECT did not request witnesses for the Initial ICC Hearing, therefore an Investigative Employee was not necessary. Visiting restrictions while housed in ASU were reviewed with SUBJECT.

The Mental Health Clinician spoke to him regarding his ASU placement noting SUBJECT is not a participant in the MHSDS at any LOC and current mental health status is stable. Continued ASU placement is not likely to result in decomposition of the inmate's mental health condition and SUBJECT is able to understand and participate in the classification hearing. Subject's central file does not reflect in cell violence or predatory behavior. Subject is clear for Single cell occupancy. The CDC forms 812, 812C, 127, 840, and MCSF have all been reviewed and or updated as necessary.

Based upon a review of SOLTERO'S CDC 114D, Central File, case factors, and through discussion with him, committee elects to: Refer to the CSR for a 45 day ASU extension to complete the investigation relative to Enemy Concerns. Retain in ASU pending CSR review and completion of the Investigation. Establish MAX Custody and WG/PG of D2D effective 10/16/2006, due to the Subject being on C status prior to placement in ASU. Clear for Single cell and walk alone yard. Psych is Clear. At the conclusion of this review, SOLTERO was informed of his Appeal Rights with regards to this committee's actions. SOLTERO acknowledged his understanding and disagreement with committee's actions. Soltero included the following statement, "I deny emphatically any legitimacy to the said information, on 114D of 10/16/2006. I have no recollection nor any knowledge of receiving a threat to my life or safety nor have I articulated, gestured, written, or indicated to any person(s) that I received any such threat(s) as stipulated there upon the 114D administrative segregation unit placement notice, dated 10/16/2006, Inmate hereby disqualifies above said ill-conceived notion(s)."

STAFF ASSISTANT Not Assigned: (Issues not complex and non-participant in MHSDS)

INMATE CASE FACTORS

CUSTODY	PS/LEVEL	WG/PG & EFF. DATE	RELEASE DATE	GPL	RECLASS	AGE	ETHNIC	TERMER	NEXT BPT & DATE
MAX	161/IV	D2D - 10/16/2006	MEPD 2/24/2021	12 (R)	11/2/2006	32	MEX	1st	IPCH 10/2018
RECEIVED	RECEIVED FROM & TYPE OF TX		RECEIVED CDC	COUNTY OF COMMITMENT		SENTENCE		RESTITUTION	
6/22/2004	CAL Non-Adverse		2/6/1997	San Diego		26 Years to Life		\$7700.00	
COMMITMENT/OFFENSE									
1st Degree Murder									
PRIOR ARREST HISTORY		DISCIPLINARY HISTORY							
I/O		Willfully Obstructing/Delaying PO, Battery on an Inmate W/SBI, Delaying a Peace Officer in the performance of Duty, Refusing to Submit to Urinalysis, Possession of Dangerous Contraband, Flooding, Att to introduce contraband into Ad Seg, Participation in a Riot							
SEX OFFENSES			ARSON OFFENSES			ESCAPES			
Clear as of 10/2/2006			Clear as of 10/2/2006			Clear as of 10/2/2006			
ENEMIES		GANG/TIP					CONFIDENTIAL		
Noted on CDC 812 & CDC 812C		No Gang					Noted & Reviewed		
MEDICAL		TB - DATE 128C	DENTAL	DPP		SUBSTANCE ABUSE			
Full Duty		22 - 5/3/2006	3	N/A		Alcohol, Cocaine, Marijuana			
PSYCH			MDO			DDP			
Clear			Doesn't Meet MDO Criteria			NCF			
HOUSING	CELL STATUS		CAMP, MSF, CCF, SAP, CCRC, REST. CENTER, & MCCF ELIGIBILITY						
180 Design (A1)	Single Cell	Camp Eligible: No VIO - LIF MSF Eligible: No VIO - LIF MCCF Eligible: No -		CCF Eligible: No VIO - LIF SAP Eligible: No VIO - LIF		CCRC Eligible: No VIO - LIF Rest. Center Eligible: No VIO - LIF			
FPTIP			HWD			JOB ASSIGNMENT			
US Citizen			None			Unassigned			

COMMITTEE MEMBERS

MEMBERS

CHAIRPERSON
M. Moore III, CDW (A)

B.F. Rankin, FC; C. Sanders, PhD

RECORDER
V. Solis, CCII (Sup)

10-26-07

INITIAL ASU REVIEW

Committee: ICC

EXHIBIT

Amend. 'B'